SUMMARIES OF RECENT CASE LAW
JULY 1, 2018–SEPTEMBER 30, 2018

DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PUBLISHED OPINIONS

United States v. Guevara, 894 F.3d 1301 (11th Cir. 2018) (remand for findings and explanation supporting U.S.S.G. § 3C1.1 obstruction-of-justice enhancement because the record did not clearly reflect how the defendant's conduct was purposefully calculated to impede investigation or prosecution).

Hylor v. United States, 896 F.3d 1219 (11th Cir. 2018) (pursuant to *United States v. St. Hubert*, because Florida first-degree murder is a violent felony under the ACCA's elements clause, attempted first-degree murder is likewise a violent felony; Judge Jill Pryor concurred, but expressed disagreement with *St. Hubert*'s holding that an attempt offense necessarily is an ACCA violent felony if the completed offense is a violent felony).

United States v. Watts, 896 F.3d 1245 (11th Cir. 2018) (the district court did not err in applying an obstruction-of-justice enhancement under U.S.S.G. § 3C1.1, because the defendant "destroyed material evidence" by altering his distinctive tattoos).

In re Williams, 898 F.3d 1098 (11th Cir. 2018) (inmate was not entitled to authorization to file a second or successive 28 U.S.C. § 2254 petition, because he raised the same claim in his initial petition and did not raise a claim based on a new rule of constitutional law or newly discovered evidence; Judges Wilson and Martin, concurred, expressed disagreement with the Court's holding in *United States v. St. Hubert*, that published orders denying second-or-successive authorization—which are

unreviewable, decided on an expedited 30-day timetable, and usually based on pro se filings without briefing—are binding precedent).

United States v. Maitre, 898 F.3d 1151 (11th Cir. 2018) (sufficient evidence supported a deliberate-ignorance jury instruction, the conviction for conspiracy to possess unauthorized access devices, and the court's refusal of minor-role reduction, though the evidence did not show that Ms. Maitre personally possessed devices, stolen purses and credit cards were in plain view in home she shared with co-defendant boyfriend, and a co-defendant testified he gave Ms. Maitre 15 to 20 purses as gifts despite limited income and she never asked questions).

United States v Elbeblawy, 899 F.3d 925 (11th Cir. 2018) (admission at trial of the factual basis from a plea agreement that Mr. Elbeblawy signed but later withdrew from did not violate Fed. R. Evid. 410, because in the agreement he expressly waived the right to exclusion under Rule 410).

United States v. Joyner, 899 F.3d 1199 (11th Cir. 2018) ((1) admission of one defendant's statement that he and co-defendant went to offense scene together on night of offense was not *Bruton* Confrontation Clause violation because, standing alone, the statement was not clearly inculpatory; (2) one-level miscalculation of defendant's offense level was plain error, requiring vacatur of sentence and remand).

United States v. Castillo, 899 F.3d 1208 (11th Cir. 2018) (defendant's conviction under the Maritime Drug Law Enforcement Act ("MDLEA") for possession with intent to distribute cocaine, in international waters off the coast of Guatemala and more than 2,000 miles from United States, did not exceed Congress's Article I authority or deprive defendant of due process, and Congress had a rational basis for excluding MDLEA offenses from 18 U.S.C. § 3553(f) "safety valve").

Beeman v. United States, 899 F.3d 1218 (11th Cir. 2018) (denial of rehearing *en banc*; Judge Martin joined by Judge Jill Pryor, dissenting, asserted that the panel decision incorrectly imposed an additional test beyond the merits analysis by requiring a showing on a 28 U.S.C. § 2255 claim under *Johnson v. United States*, 135 S. Ct. 2551 (2015), that the

ACCA enhancement more likely than not depended solely on the ACCA's residual clause; instead, she wrote, a § 2255 movant could carry the burden of establishing a *Johnson* claim by showing that the enhancement could not be based on current application of the ACCA's elements clause and enumerated clause).

Colon v. United States, 899 F.3d 1236 (11th Cir. 2018) (Mr. Colon's Indiana battery conviction qualified as a violent felony under the ACCA's elements clause because the Indiana statute includes the element of "resulting bodily injury," which requires that, at a minimum, a victim suffers physical pain).

United States v. McIntosh, 900 F.3d 1301 (11th Cir. 2018) (civil commitment after verdict of not guilty by reason of insanity was lawful under 18 U.S.C. § 4243(f) because district court correctly found that the defendant posed a substantial risk of harm to others due to a mental disease or defect of narcissistic personality disorder).

United States v. Dixon, 901 F.3d 1322 (11th Cir. 2018) ((1) defendant's personal Fourth Amendment rights were not implicated by search of his girlfriend's car in which he was a passenger, though he had a spare key to car and had driven it with her permission; (2) represented defendant's incriminating jailhouse statements to police while in jail were not obtained in violation of his right to counsel, because defendant, not police, initiated the conversation; and (3) sufficient evidence showed a single drug conspiracy rather than multiple separate conspiracies, despite no single "boss," where defendants sold drugs together, excluded others from their turf, brought customers to one another, and split money).

United States v. Williams, 902 F.3d 1328 (11th Cir. 2018) (district court erred in denying motion for new trial without holding evidentiary hearing to determine whether trial counsel's simultaneous representation of him and his co-defendant deprived Mr. Williams effective assistance).

United States v. Oliva, 904 F.3d 910 (11th Cir. 2018) (denial of motion to dismiss for speedy-trial violation was not error or violative of the Sixth Amendment, despite finding that government's gross negligence caused

delay of nearly 23 months between indictment and arrest because the defendants did not prove actual prejudice

United States v. Phifer, 904 F.3d 947 (11th Cir. 2018) (possession with intent to distribute ethylone could not support conviction of possession with intent to distribute a controlled substance because ethylone is not specifically enumerated as a controlled substance and DEA's regulatory definition of "positional isomer" does not unambiguously establish ethylone to be a positional isomer of butylone).

Randolph v. United States, 904 F.3d 962 (11th Cir. 2018) (the district court properly dismissed a successive 28 U.S.C. § 2255 motion based on *Welch v. United States*, 136 S. Ct. 1257 (2016), because district court had denied movant's prior § 2255 motion based on *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *Welch* did not announce new constitutional rule but simply held *Johnson*'s rule to be retroactive).

UNPUBLISHED OPINIONS FROM THE NORTHERN DISTRICT OF ALABAMA

United States v. Dunning, --- F. App'x ---, 2018 WL 3361047 (11th Cir. July 10, 2018) (N.D. Ala. no. 2:14-cr-00382-BJR-TMP) (sufficient evidence supported fraud and money-laundering convictions against the CEO of a large health center, where evidence showed that he siphoned health center funds into his personal account, actively participated in fraudulent contracts for the purchase and renovation of buildings, and made misrepresentations and omissions regarding use of federal grant funds).

United States v. Turner, --- F. App'x ---, 2018 WL 3359603 (11th Cir. July 10, 2018) (N.D. Ala. no. 2:15-cr-00396-LSC-JHE) (prior Alabama first-degree burglary convictions qualified as violent felonies under the ACCA's enumerated clause because inclusion of elements beyond those required for generic burglary makes the Alabama offense narrower than the generic offense, not broader).

United States v. Ledonne, --- F. App'x ---, 2018 WL 3492112 (11th Cir. July 20, 2018) (N.D. Ala. no. 3:10-cr-00087-AKK-JHE) (district court in a supervised-release revocation did not clearly err in crediting the

government's proffered assertion that a two-year sentence would improve the likelihood of a transfer of supervision to defendant's home district, and upward variance to impose that statutory maximum sentence was not unreasonable).

United States v. Gonzalez-Flores, --- F. App'x ---, 2018 WL 3699077 (11th Cir. Aug. 3, 2018) (N.D. Ala. no. 5:17-cr-00123-LSC-SGC) (36-month sentence for illegal re-entry, above guidelines range, was substantively reasonable).

United States v. Dawkins, --- F. App'x ---, 2018 WL 3769224 (11th Cir. Aug. 8, 2018) (N.D. Ala. no. 7:16-cr-00440-LSC-SGC) (108-month sentence for being a felon in possession of a firearm, imposed at the top of the guidelines range, was substantively reasonable).

United States v. Rowe, --- F. App'x ---, 2018 WL 3913100 (11th Cir. Aug. 15, 2018) (N.D. Ala. no. 1:08-cr-00029-SLB-SGC) (statutory maximum 24-month sentence upon revocation of supervised release, was substantively reasonable even though Mr. Rowe's sentence for the underlying offense had been at the top of the guideline range).

United States v. Neal, --- F. App'x ---, 2018 WL 3998316 (11th Cir. Aug. 21, 2018) (N.D. Ala. no. 7:17-cr-00284-LSC-TMP) (60-month sentence for being a felon in possession of a firearm, above guidelines range, was substantively reasonable).

United States v. Gober, --- F. App'x ---, 2018 WL 4203456 (11th Cir. Sept. 4, 2018) (N.D. Ala. no. 2:16-cr-00377-KOB-SGC) (sufficient evidence supported conviction for possession with intent to distribute methamphetamine, despite deviation from standard DEA procedures and confidential informant's asserted credibility problems, where CI's testimony about controlled buy was corroborated by audio recording).

United States v. Wideman, --- F. App'x ---, 2018 WL 4275868 (11th Cir. Sept. 7, 2018) (N.D. Ala. no. 6:15-cr-00390-KOB-SGC) (evidence of 50 marijuana plants found growing on Mr. Wideman's land was admissible under Rule 403 in his trial for being a felon in possession of firearms because the plants were in close proximity to the firearms and were

clearly visible from his mobile home, and thus were relevant to show that he knowingly possessed the firearm).

United States v. Gay, --- F. App'x ---, 2018 WL 4355884 (11th Cir. Sept. 12, 2018) (N.D. Ala. no. 5:17-cr-00339-AKK-JHE) (in sentencing for failing to register as a sex offender, a condition of supervised release requiring sex-offender treatment was not an abuse of discretion).

United States v. Silva, --- F. App'x ---, 2018 WL 4381526 (11th Cir. Sept. 14, 2018) (N.D. Ala. no. 5:16-cr-00257-AKK-JHE) (the district court's failure to advise Mr. Silva that he would be subject to an enhancement under U.S.S.G. § 2D1.1 because he possessed a firearm in connection with his offense did not render his guilty plea involuntary).